REMARKS

Applicants reply to the Final Office Action dated March 09, 2011 within two months. Claims 1-14 and 16-23 were pending in the application and the Examiner rejects claims 1-14 and 16-23. Support for the amendments may be found in the originally-filed specification, such as for example, in paragraphs [0011] and [0012]. No new matter is entered with these amendments. Applicants respectfully request reconsideration of this application.

Examiner Teleconference

Applicants thank the Examiner for the courtesy of the teleconference conducted on April 29, 2011. Although no agreement as to the claims and/or rejections was reached, the Examiner asserted she would carefully review the arguments presented.

Rejections under 35 U.S.C § 103

The Examiner rejects claims 1-2, 6-11, 13 and 21 under 35 U.S.C. § 103(a), as being unpatentable over Cannon et al., U.S. Patent No. 6,154,729, ("Cannon"), in view of Lee et al., U.S. Publication No. 2002/0099649 ("Lee") and further in view of Richey et al., U.S. Patent No. 7,356,516 ("Richey"). The Examiner rejects claims 3-5, 12, 14, 16-20 and 22-23 under 35 U.S.C. § 103(a), as being unpatentable over Cannon in view of Lee in view of Richey and in further view of Sharper, U.S. Patent Publication No. 2004/0030644 ("Sharper"). Applicants respectfully disagree with these rejections, but Applicants present claim amendments in order to clarify the patentable aspects of the claims and to expedite prosecution.

On page 3 of the Office Action, the Examiner states "in response to argument (2) that Lee teaches away from a fee not assessed to all disputed transactions and therefore the combination of Richey cannot be combined with Cannon in view of Lee, the examiner respectfully disagrees. The prior art Lee teaches; 'In addition to paying a fee for each chargeback, issuing banks can levy fines on merchants having too many chargebacks.' As broadly interpreted by the examiner, the term 'can' indicate an ability or a means to set forth further action. However, 'can' provides an option for action and does not limit the action as a definite action 'levy a fine'".

Applicants respectfully clarify that the pending claims recite "wherein the fee is not assessed to all disputed transactions." Lee recites "In addition to paying a fee for each chargeback." The word "can" does not appear in the phrase "In addition to paying a fee for each chargeback." Lee explicitly ***teaches away*** from "wherein the fee is not assessed to all disputed transactions" as recited by independent claim 1 (emphasis added) and as similarly recited by independent claims 14 and 20.

As stated in 2143.01 VI. of the MPEP, "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." (*In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Thus, Lee is an inappropriate reference for combination with the other cited references and as stated above, Lee explicitly teaches away from and is silent as to "wherein the fee is not assessed to all disputed transactions," as recited by independent claim 1 (emphasis added) and as similarly recited by independent claims 14 and 20.

On page 4 of the Office Action, the Examiner states "With respect to the teachings of Lee "paying a fee for each chargeback"; Richey teaches that, when a chargeback occurs and a fee is assessed, that both the merchant and/or the buyer can dispute the fine/fee and teaches that the participating parties can challenge and bring the matter to arbitration which then determines who and how much if any fines/fee the participating entities (issuer, acquirer, merchant or buyer) will pay for the chargeback. The prior art Richey explicitly teaches fee/fines can be applied for each chargeback, but that the participating entities can challenge the fee. Therefore, the Examiner maintains that the teachings of the prior art are directed toward the same scope with respect to fines/fee and that Richey can be applied within the parameter of the teachings of Lee without changing the principle of operation of the prior art." (Emphasis added).

Applicants respectfully assert that the present claims recite "wherein the fee is not assessed to all disputed transactions." As explicitly conceded by the Examiner on page 4 of the Office Action, "Richey teaches that when chargeback occurs and a fee is assessed..." Thus, Richey explicitly teaches assessing a fee for each chargeback. Thus, similar to Lee, Richey also ***explicitly teaches away*** from "wherein the fee is not assessed to all disputed transactions" as recited by independent claim 1 (emphasis added) and as similarly recited by independent claims 14 and 20. It is immaterial to the present claims if the fee is ultimately paid or disputed by others.

Similar to Lee above, Richey is also an inappropriate reference for combination with the other cited references and as stated above, Richey explicitly teaches away from and is silent as to "wherein the fee is not assessed to all disputed transactions," as recited by independent claim 1 (emphasis added) and as similarly recited by independent claims 14 and 20. Thus, Applicant notes the Examiner has not shown a *prima facie* case of obviousness because the Examiner has not carried her burden of factually supporting his conclusion of obviousness.

Moreover, as discussed in the Examiner interview, none of the cited references, alone or in combination recite "assessing, by the computer-based system, a fee ... in response to the merchant exceeding a threshold number of time periods in which the merchant may exceed the first threshold ratio without incurring the fee," as recited by independent claim 1 (emphasis added) and as similarly recited by independent claims 14 and 20.

Dependent claims 2, 6-11, 13 and 21 variously depend from independent claims 1, 14 and 20. Therefore, Applicants assert that dependent claims 1-2, 6-11, 13 and 21 are patentable for at least the same reasons stated above for differentiating independent claims 1, 14 and 20 as well as in view of their own respective features. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 1-2, 6-11, 13 and 21.

Sharper generally teaches "a method for facilitating charge card transactions including evaluating electronically transmitted data relating to a charge card transaction and guaranteeing a charge card transaction that meets certain criteria against risk of loss," (abstract.)

The Examiner states on pages 17 and 18, "Sharper teaches: ...establishing the predetermined threshold ratio based on a factor comprising an industry category including the merchant (see par 11, note that chargeback characteristics vary from industry. A ratio based on industry category is thus fairly suggested to accommodate the differences between industries). It would have been obvious to one having ordinary skill in the art at the time of Applicant's invention to have provided Cannon in view of Lee with that industry differentiation of Sharper in order to have matched the risk of an industry with the level of fine as taught implicitly by Sharper since Sharper teaches incidence of chargebacks varies across industries." (emphasis added.)

Applicants respectfully assert that the level of fine is not what is presently claimed. The pending claims recite the "predetermined threshold ratio is based on a factor comprising an industry category of the merchant," (emphasis added). Thus, in the presently pending claims, the level of the threshold is based on a factor comprising an industry category of the merchant. Sharper is silent as to the level of the threshold being based on a factor comprising an industry category of the merchant. The other cited references do not cure this deficiency of Sharper. Thus, the cited references alone or in combination do not disclose or contemplate "wherein the predetermined threshold ratio is based on a factor comprising an industry category of the merchant."

Thus, Cannon, Lee, Richey, Sharper, alone or in combination, do not disclose or contemplate at least "assessing, using the computer-based system, a fee against the merchant for

each disputed transaction involving the merchant that exceeds the predetermined threshold ratio, in response to the merchant's ratio being at least equal to the predetermined threshold ratio and in response to the merchant exceeding a threshold number of time periods in which the merchant may exceed the predetermined threshold ratio without incurring the fee, wherein the fee is not assessed to all disputed transactions, and wherein the fee is set based on a monetary value of each of the disputed credit transactions of the merchant that exceeds the predetermined threshold ratio," as recited by independent claim 1 (emphasis added) and similarly recited by independent claims 14 and 20.

Dependent claims 5, 12, 16-19 and 22-23 variously depend from independent claims 1, 14 and 20. Therefore, Applicants assert that dependent claims 5, 12, 16-19 and 22-23 are patentable for at least the same reasons stated above for differentiating independent claims 1, 14 and 20 as well as in view of their own respective features. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of dependent claims 5, 12, 16-19 and 22-23.

When a phrase similar to "at least one of A, B, or C" or "at least one of A, B, and C" is used in the claims or specification, Applicants intend the phrase to mean any of the following: (1) at least one of A; (2) at least one of B; (3) at least one of C; (4) at least one of A and at least one of B; (5) at least one of B and at least one of C; (6) at least one of A and at least one of C; or (7) at least one of A, at least one of B, and at least one of C.

Applicants respectfully submit that the pending claims are in condition for allowance. The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **19-2814**. Applicants invite the Examiner to telephone the undersigned, if the Examiner has any questions regarding this Reply or the present application in general.

Respectfully submitted,

Dated: May 3, 2011

By: _____
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